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the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is at least the differential established in 25.202(a) or in accordance with agency procedures.

25.206 Noncompliance.

The contracting officer must—

(a) Review allegations of Buy American Act violations;

(b) Unless fraud is suspected, notify the contractor of the apparent unauthorized use of foreign construction material and request a reply, to include proposed corrective action; and

(c) If the review reveals that a contractor or subcontractor has used foreign construction material without authorization, take appropriate action, including one or more of the following:

(1) Process a determination concerning the inapplicability of the Buy American Act in accordance with 25.205.

(2) Consider requiring the removal and replacement of the unauthorized foreign construction material.

(3) If removal and replacement of foreign construction material incorporated in a building or work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Government, the contracting officer may determine in writing that the foreign construction material need not be removed and replaced. A determination to retain foreign construction material does not constitute a determination that an exception to the Buy American Act applies, and this should be stated in the determination. Further, a determination to retain foreign construction material does not affect the Government's right to suspend or debar a contractor, subcontractor, or supplier for violation of the Buy American Act, or to exercise other contractual rights and remedies, such as reducing the contract price or terminating the contract for default.

(4) If the noncompliance is sufficiently serious, consider exercising appropriate contractual remedies, such as terminating the contract for default. Also consider preparing and forwarding a report to the agency suspending or debarring official in accordance with Subpart 9.4. If the noncompliance ap-

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pears to be fraudulent, refer the matter to other appropriate agency officials, such as the officer responsible for criminal investigation.

Subpart 25.3 [Reserved]

Subpart 25.4—Trade Agreements

25.400 Scope of subpart.

(a) This subpart provides policies and procedures applicable to acquisitions that are covered by—

(1) The World Trade Organization Government Procurement Agreement (WTO GPA), as approved by Congress in the Uruguay Round Agreements Act (Pub. L. 103-465);

(2) Free Trade Agreements (FTA), consisting of—

(i) NAFTA (the North American Free Trade Agreement, as approved by Congress in the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note));

(ii) Chile FTA (the United States-Chile Free Trade Agreement, as approved by Congress in the United States-Chile Free Trade Agreement Implementation Act (Pub. L. 108-77));

(iii) Singapore FTA (the United States-Singapore Free Trade Agreement, as approved by Congress in the United States-Singapore Free Trade Agreement Implementation Act (Pub. L. 108-78));

(iv) Australia FTA (the United States-Australia Free Trade Agreement, as approved by Congress in the United States-Australia Free Trade Agreement Implementation Act (Pub. L. 108-286); and

(v) Morocco FTA (The United States-Morocco Free Trade Agreement, as approved by Congress in the United States-Morocco Free Trade Agreement Implementation Act (Pub. L. 108-302);

(3) The least developed country designation made by the U.S. Trade Representative, pursuant to the Trade Agreements Act (19 U.S.C. 2511(b)(4)), in acquisitions covered by the WTO GPA;

(4) The Caribbean Basin Trade Initiative (CBTI) (determination of the U.S. Trade Representative that end products or construction material granted

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duty-free entry from countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, *et seq.*), with the exception of Panama, must be treated as eligible products in acquisitions covered by the WTO GPA);

(5) The Israeli Trade Act (the U.S.-Israel Free Trade Area Agreement, as approved by Congress in the United States-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. 2112 note)); or

(6) The Agreement on Trade in Civil Aircraft (U.S. Trade Representative waiver of the Buy American Act for signatories of the Agreement on Trade in Civil Aircraft, as implemented in the Trade Agreements Act of 1979 (19 U.S.C. 2513)).

(b) For application of the trade agreements that are unique to individual agencies, see agency regulations.

[69 FR 77873, Dec. 28, 2004]

25.401 Exceptions.

(a) This subpart does not apply to—

(1) Acquisitions set aside for small businesses;

(2) Acquisitions of arms, ammunition, or war materials, or purchases indispensable for national security or for national defense purposes;

(3) Acquisitions of end products for resale;

(4) Acquisitions from Federal Prison Industries, Inc., under Subpart 8.6, and acquisitions under Subpart 8.7, Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled; and

(5) Other acquisitions not using full and open competition, if authorized by Subpart 6.2 or 6.3, when the limitation of competition would preclude use of the procedures of this subpart; or sole source acquisitions justified in accordance with 13.501(a).

(b) In the World Trade Organization Government Procurement Agreement (WTO GPA) and each FTA, there is a U.S. schedule that lists services that are excluded from that agreement in acquisitions by the United States. Acquisitions of the following services are excluded from coverage by the U.S. schedule of the WTO GPA or an FTA as indicated in this table:

The service (Federal Service Codes from the Federal Procurement Data System Product/Service Code Manual are indicated in parentheses for some services.)		WTO GPA	NAFTA and Chile FTA	Singapore FTA	Australia and Morocco FTA
(1)	All services purchased in support of military services overseas..	X	X	X	X
(2)	(i) Automatic data processing (ADP) telecommunications and transmission services (D304), except enhanced (<i>i.e.</i> , value-added) telecommunications services..	X	X
	(ii) ADP teleprocessing and timesharing services (D305), telecommunications network management services (D316), automated news services, data services or other information services (D317), and other ADP and telecommunications services (D399).	X	X
	(iii) Basic telecommunications network services (<i>i.e.</i> , voice telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, and private leased circuit services, but not information services, as defined in 47 U.S.C. 153(20))..	*	*	X	X
(3)	Dredging	X	X	X	X
(4)	(i) Operation and management contracts of certain Government or privately owned facilities used for Government purposes, including Federally Funded Research and Development Centers.	X	X
	(ii) Operation of all Department of Defense, Department of Energy, or the National Aeronautics and Space Administration facilities; and all Government-owned research and development facilities or Government-owned environmental laboratories.	**	X	**	X
(5)	Research and development	X	X	X	X